IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6899 OF 2003

Ganesh Kalunath Rawal : Petitioner

V/s.

Ulhasnagar Municipal Corporation : Respondent

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Mr.M.M.Vashi i/b. M.P.Vashi & Associates for the petitioner.

Mr.R.M.Sawant for the respondent.

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CORAM : S.A. BOBDE, J.

January 17, 2005.

P.C.:

1. The petitioner has challenged the judgement of the Addl. District Judge, Kalyan, dated 7.8.2003 upholding the order of the Deputy Municipal Commissioner (Encroachment) holding that the petitioner has encroached on Corporation's land and is liable to be evicted.

2. The respondent-Corporation issued a notice to the petitioner dated 20.6.2000 for evicting him from the premises which admeasures 7' x 13' in 'U' no.73, sheet no.47, site no.186, Ulhasnagar-3. There was an

adjudication after the petitioner responded to the notice. The Deputy Municipal Commissioner after considering the petitioner's stand came to the conclusion that the petitioner's claim that he had purchased the suit property from one Gopichand Sunderdas Sablani who had purchased it from Smt.Saraswati Ishwarlal Desai by a registered sale deed is of no avail since the sale deed itself states in the schedule that the structure is on Government land, now transferred to the Municipal Corporation. The Dy. Municipal Commissioner, therefore, held that the petitioner's possession is illegal and unauthorised and constitutes an encroachment.

3. Aggrieved thereby, the petitioner preferred an appeal to the Addl. District Judge, Kalyan, who by the judgement dated 7.8.2003 dismissed the appeal.

4. Mr.Vashi, learned counsel for the petitioner, submitted that the notice issued to the petitioner itself shows that the premises allegedly belonging to the petitioner are in 'U' no.73, sheet no.47, site no.186 and, therefore, the appellate Court has committed a mistake in observing that, in fact, no 'U' number is given to the suit property. It may be mentioned that 'U' numbers are given to properties on which encroachment made prior to

11.5.1965 has been regularised. According to Mr.Vashi, the fact that the notice refers to 'U' number itself shows that the encroachment, if any, by the petitioner has been regularised and, therefore, the respondent could not have been ordered eviction. I find this contention not sustainable in view of the fact that the mere mention of 'U' number in the notice will not outweigh an inference from the relevant record referred to by the authorities below, including the learned Addl. District Judge.

5. It has been found as a fact that according to the Town Planner's schedule, item no.73 in which the premises in question are located is included in site no.186. That site no.186 which comprises of 'U' no.73 and sheet no.47 is reserved for a public purpose and according to the development plan and the possession receipt dated 26.3.1987, site no.186, sheet no.47 is handed over by the Government to the Ulhasnagar Municipal Corporation on 26.3.1987. It is shown as reserved for Town Hall and Library. The learned Addl. District Judge has rightly observed that the suit property claimed by the appellant is situated in site no.186, 'U' no.73, sheet no.47, reserved for Town Hall. The conclusion of the learned Addl. District Judge is that the sale deed relied on by the petitioner in his favour itself shows that the

construction is on Government land and is, therefore, a clear encroachment which has never been regularised. The said finding does not suffer from any error of law apparent on the face of the record.

6. In the circumstances, there is no merit in the petition which is hereby dismissed.

Sd/-

S.A. BOBDE, J.